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EXPLORING INDIA'S CONSTITUTIONAL RIGHT TO EQUALITY

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I. ABSTRACT

The Indian Constitution's protection of the right to equality has played a crucial and revolutionary role in establishing the country's legal and socioeconomic framework. The article examines the emergence and development of the right to equality throughout history. It explores the complex web of case law that has provided this right meaning and application, revealing the intricacies of judicial interpretation over time. The emerging notion of reservation, which is a key component of the right to equality, is also examined in the article. It examines how definitions and policies have evolved as well as how they have interacted with the constitutional mandate.

In order to provide a thorough grasp of the right to equality within the Indian setting, this article weaves together the historical foundations, legal complexities, and shifting meanings of reservation through the years. It shows how important this right has been in resolving historical injustices and how it is still changing to meet the demands of a just and inclusive society. In order to provide a thorough grasp of the right to equality within the Indian setting, this article weaves together the historical foundations, legal complexities, and shifting meanings of reservation through the years. It shows how important this right has been in resolving historical injustices and how it is still changing to meet the demands of a just and inclusive society.

II. KEYWORDS

Right to equality, Reservation, rule of law, discrimination

III. INTRODUCTION

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"As long as poverty, injustice and gross inequality persist in the world, none of us can truly rest" – Nelson Mandela

The Indian Constitution's inclusion of the right to equality was heavily impacted by the country's anti-colonial struggle and pursuit of social justice. The goal of the Indian independence movement, spearheaded by leaders such as Jawaharlal Nehru and Mahatma Gandhi, was to remove the discriminatory practices of British colonial rule that continued caste, religious, and class-based inequality.

Under the direction of Dr. B.R. Ambedkar, the Indian Constitution's framers aimed to rectify these historical injustices by making the right to equality a cornerstone tenet. It was necessary that the individuals in society must be treated equally and without discrimination in order for democracy to prosper. It was thought to be critical to eliminate inequities based on religion, social norms, and age-old traditions such as untouchability, casteism, and race discrimination, which are still practiced in areas of India.

The absence of legal discrimination only on the basis of caste, race, religion, sex, or gender is defined as the right to equality. Under the Indian Constitution, Right to equality is divided in five articles namely equality before law as enunciated in Article 14, prohibition of discrimination on grounds of religion, caste, race, sex or place of birth as given in Article 15, equality of opportunity in matters of public employment as provide in Article 16, Abolition of untouchability under Article 17 and finally Abolition of titles under Article 18.

The history of India's independence movement and its following attempts to create a democratic and egalitarian society had a significant impact on the inclusion of the right to equality. It was considered crucial for maintaining social harmony, building national cohesion, and guaranteeing that every person, regardless of background, had equal rights and opportunities under the law. Therefore, the inclusion of this right in the Indian Constitution shows a dedication to redressing historical wrongs and creating a country that is more inclusive and equal. We will look at its historical background, important

provisions, and the significant influence it has had on the country's legal and socioeconomic landscape.

IV. EQUALITY BEFORE LAW

Rule of Law which is often meant to state that the law is supreme. It consists of two parts that are Equality before law and equal protection of law. The Rule of Law according to Dicey means that no man is punishable or can be lawfully made to suffer in body or goods except for distinct breach of law and no man is above the law. The Constitution of England developed Rule of Law.

It is an understood fact that the chosen government should treat its people equally; all should be equal before the law irrespective of their circumstances, position, and status in the society. This equal treatment is enumerated in our constitution at two different places. One it in the preamble itself through the usage of the words 'equality of status & opportunity'. Another is through the Article 14 which dictates that State shall not deny to any person equal opportunity before the law or equal protection of laws within the territory of India.

Equality before Law is derived from English law also known through the term of Rule of Law. The Blindfolded lady justice is a symbol of this rule, it exhibits that she cannot see so she treats everyone equally irrespective of their looks, appearances etc. It covers that area of laws that are meant to prevent discrimination. Equal Protection of Law is an American concept. It means to treat two persons equally but differently. Equal is not the same. They are two different terminologies. Equally means in the sense to treat that according to their needs and circumstances.

E.g., In a home there are two children one is 9 yrs. old and the other is 17 yrs. old. Now if we provide them with the same clothing and same amount of food it is not treating equally. Treating equally is providing them nourishment according to their needs and circumstances. It covers that area of laws that are made to promote or that demand equality.

In *State of Bombay v. F.N. Balsara 1951 AIR 318* a test was developed to not misuse the concept of getting treated differently or having some gains over others to one's advantage. This was the old Doctrine. This test mainly gave rise to two factors that had to be checked in order to determine that the rights are equally protected[2].

Intelligible Differentia- Means an intelligent difference. It denotes or looks towards the reason on the basis of which one is differentiating the other; it should be a valid or intelligent reason. E.g. - one student is in 8th standard and the other one is in 11th standard. Both are given the same examination paper of mathematics to solve. Here there is clear distinction between the two as they have different brain levels.

Rational Nexus- This is based on classifying the persons or group of people in two and then joining it with the desired end in the brain. E.g. - continuing from the illustration taken above, one would observe that the end desired is to evaluate the students according to their maturity level; hence the solution is to provide them with question papers accordingly.

With the judgement in *E.P. Royappa v. State of Tamil Nadu1974 AIR 555* gave rise to formulation of a new doctrine. An important aspect was added as "Equality is a dynamic concept; it cannot be cabined or confined with traditional limits"[3]. It has added to it the concept of natural justice. Now the terms equality before law consists of rule of law and natural justice combined.

Then came the rather celebrated judgment of *Maneka Gandhi v. UOI 1978 AIR 597*. It had focused on striking down arbitrariness. It states that if arbitrariness is stricken down then it promotes equality and fairness. It clearly states that 'reasonableness is an essential element of equality or non- arbitrariness'[4]. Hence, the new doctrine stands to include reasonableness along with the tests from the old doctrine. It supports reasonableness & says if anything is arbitrary it is opposed to reasonableness.

[2] State of Bombay v. F.N. Balsara 1951 AIR 318
[3] E.P. Royappa v. State of Tamil Nadu1974 AIR 555
[4] Maneka Gandhi v. UOI 1978 AIR 597, Para 7 (284).

V. PROHIBITION OF DISCRIMINATION

The basic idea of this article is that it prevents discrimination or states that one cannot be discriminated on the basis of five grounds which are religion, Race, Sex, Caste, Place of Birth. One cannot discriminate on the basis of these 5 grounds individually or together. But if any one of the above is paired with a valid reason they are allowed to discriminate, this in turn will not be termed as discrimination.

Let us consider the situation of favouring men in heavy steel industry. Now this is sex-based discrimination, but it has a valid reason as it is based on sheer physical strength. Hence, this is permissible.

It has to be noted that 15(4) is extremely important since it gives the state the authority to create specific measures for the improvement of socially and educationally disadvantaged groups. In order to uplift marginalized communities, this article gives the government the authority to institute affirmative action programs and put regulations like hiring and educational reservations into effect. Article15(4) promotes social justice and inclusion by recognizing the structural inequities and historical injustices that particular communities have experienced. It is essential to the fight for a more equal society because it makes sure that everyone, regardless of socioeconomic status, has access to opportunities.

The term discrimination is used in terms of unfavourable distinction, but we come across another term labelled as positive discrimination, this mainly focuses over favourable distinction. The special provisions are made in regard to women and children, and also for the advancement of SEBC, SC and ST

In *Yusuf v. state of Bombay 1954 SCR 930* sec. 497 of IPC was questioned. It was contended that in this particular section there lays no punishment for women in the offence of adultery. Hence, this section is discriminatory. But the Supreme Court clarified that the

immunity provided to women in sec. 497 will fall under Article 15 (3) as it is necessary to give some special rights to women[5].

In the case of *State of Madras v. Champakam Dori rajan AIR 1951 SC 226* madras government had issued an order that all medical colleges should reserve seats for all the communities. This was challenged. Before the Apex Court which stated that on the basis of only caste & religion and on the basis solely of communal line, reservations cannot be given[6]. So, the order was held to be unconstitutional.

In *M.R. Balaji v. State of Mysore 1963 AIR 649* state of Mysore issued a government order for reservation in medical and engineering colleges. It said that 28% reservation will be given to backward classes, 15% to scheduled caste, 22% to more backward class and 3% to scheduled tribes. It will imply that 68% seats are reserved in total and only 32% is open for others[7]. The order was stricken out and Supreme Court set some criterions in order to determine backward class. These included-

(1) Backwardness should be both social & educational.

(2) Caste cannot be sole dominant case.

(3) Further categorization is not recognized.

(4) Limit to 50% for all reservations.

There was a turn in events in the case of *Indra Sawhney v. Union of India AIR 1993 SC 477*. It out ruled two of the rules provided by Supreme Court in the earlier judgment. It stated that and that the further categorization of backward classes into more backward classes is also valid[8].

Then the case of *Keshavananda Bharati v. State of Kerala (1973) 4 SCC 225* in which the Supreme Court of India created the "basic structure doctrine," which holds that the Constitution's

[5] Yusuf v. state of Bombay 1954 SCR 930
[6] State of Madras v. Champakam Dori rajan AIR 1951 SC 226
[7] M.R. Balaji v. State of Mysore 1963 AIR 649
[8] Indra Sawhney v. Union of India AIR 1993 SC 477

key values—such as equality before the law—cannot be changed or repealed by the Parliament.

The constitutional protections against discrimination were strengthened by its confirmation of the basic structural theory. The Keshavananda Bharati case served as a testament to the judiciary's reaffirmation of Article 15's status as a keystone of India's commitment to social justice and equality by serving as a safeguard against discriminatory acts[9].

In P.A. Inamdar & Ors. v. State of Maharashtra (2005) 6 SCC 537 case a major issue was pointed out that the state can control the admissions and reservations in the state fund or governmental institutions but what about the unaided Private institutions it was observed that the state cannot control them[10].

So later by the 93rd Amendment Act clause 5 was added to article 15. It states that the state has right to provide special provisions for the advancement of SEBC, SC and ST. It is almost same as the previous section but differs on one basis that is it specifically talks about admissions in educational institutions both public and private.

VI. EQUALITY OF OPPORTUNITY

Dr.BR Ambedkar addressed reservation as compensatory benefits to uplift those weaker sections of society that have been forever deprived and necessitated the upliftment to reach the stage of welfare state. Article 16 states that the State would provide equality of opportunity in employment / Appointment in all the government-based jobs. But the third clause to the same section talks about reservation on the basis of Residence. It is an exception to 16 (2). It says that one can provide opportunity or reserve seats for a particular backward area of a state. Let us consider the regions of Bastar & Dantewade that are the backward areas of Chhattisgarh. It can be said that they have slow growth and development as compared to the other areas of the state. The rationale behind this

[9] Keshavananda Bharati v. State of Kerala (1973) 4 SCC 225
[10] P.A. Inamdar & Ors. v. State of Maharashtra (2005) 6 SCC 537

clause was to accelerate development and provide equal opportunity to different areas of the state.

In *Balaji v. state of Mysore 1964 SCR (4) 680* issue was raised over the application of the fourth clause of this article. it was subsequently held in the case that on fulfilling two major conditions the clause can be made applicable. One of them is that one must belong to a backward class both socially and economically. Other being the caste should not have adequate representation in state services[11].

In *Devdasan v. UOI 1964 SCR (4) 680* the institution had applied the carry forward rule. It meant that the seats in reservation that are not filled in a year are carried onto the next year. The government had reserved 17% seats for SC and ST. In 1961 the proportion reached to 29, which were 29 seats reserve ec from 45 seats which meant 64% seats were reserved. The court did not provide consonance with the above and held that above 50% reservation is not valid[12].

In the leading case of *Indira Sawhney v. UOI AIR 1993 SC 477*a Commission was constituted headed by Chairperson B.P. Mandal to investigate socially and educationally backward classes. It suggested that 27% reservation should be given in employment. The bench of nine gave a decision in which the ratio was 6:3 where 12 principles were propounded the important between them as follows:

1. 27% reservation for socially and educationally backward classes is correct.
2. Reservation is confined to appointment, not to promotions.
3. Reservations cannot exceed 50%

Parliament did not support this decision, so under the 77th Amendment[13] clause 4A was added to it where reservations in context of appointment were allowed and could exceed the bar of 50%. The meaning of "backward class of citizens" was clarified by this

[11] Balaji v. state of Mysore 1964 SCR (4) 680
[12] Devdas an v. UOI 1964 SCR (4) 680
[13] Legislative Department, Ministry of Law and Justice, Constitution (Seventy-Seventh Amendment) Act, 1995, last visited on 24th Mar 2024.

amendment to include Scheduled Castes and Scheduled Tribes in addition to socially and educationally backward classes. Then further the 82nd Amendment[14] added clause (4B) to Article 16, allowing the state to give any class or classes of public service posts preference when it comes to promotions. It allowed for actions to improve other socially and educationally underprivileged groups by extending the reach of quota beyond Scheduled Castes and Scheduled Tribes. Further Clause (4C) was added to Article 16 by the 91st Amendment[15], giving the state the authority to reserve positions for members of the public who are less well-off financially. It established economic grounds for reservations, independent of caste or class, and affected decisions made by courts over the legality and use of these reservations. These are the certain changes that have been seen over the years.

VII. ABOLITION OF UNTOUCHABILITY

This section basically talks about untouchability but "untouchability" as a term is not defined in constitution. The word is written in inverted comma's implying that we will not literally define the meaning but will derive it from the historical practices. Hence, will mean casts-based untouchability, will means caste-based discrimination. It is further connected to Art 35 that gives the parliament the power to make or enact laws to abolish it for the articles while prescribing punishment. Changes were made to the Untouchability (offence) Act, 1955 and came up with Protection of Civil Rights Act, 1955.

In *State of Bombay v. Sardar Syedna Taher Saifuddin Saheb 1958 SCR 1010* The Supreme Court ruled in this case that a religious community's practice of social boycotts or excommunications amounted to untouchability and was, therefore, unlawful under Article 17[16].

[14] Legislative Department, Ministry of Law and Justice, Constitution (Eighty- Second Amendment) Act, 1995, last visited on 24th Mar 2024.
[15] Legislative Department, Ministry of Law and Justice, Constitution (Ninety- First Amendment) Act, 1995, last visited on 24th Mar 2024
[16] State of Bombay v. Sardar Syedna Taher Saifuddin Saheb 1958 SCR 1010

In State of Kerala v. N.M. Thomas 1976 SCC (2) 310 the Supreme Court ruled that it was unlawful under Article 17 to deny someone employment since it amounted to untouchability based on caste or descent.

In *People Union for Democratic Rights v. UOI 1982 AIR 1473* it was observed that the in Article 15 and 17 protection is available not only against state but also against private individuals[17].

In *State of Gujarat v. Gujarat's Honourable High Court AIR 1998 SC 3164*. As a result, the Supreme Court ruled that Article 17 of the Constitution was violated in this case because the practice of separating Dalit inmates from other inmates amounted to untouchability[18].

VIII. ABOLITION OF TITLES

To abolish titles, general title of nobility or heredity. This in general prohibits state from conferring any title to any person. It prohibits citizen to accept any title from foreign state. A foreigner holding any office of profit or state cannot hold / accept title without the permission of president and even in general foreigner & citizens are prohibited to take titles without permission of president. Though there is an exception associated in the case of *Balaji Raghwan v. UOI (1996) 1 SCC 361***.** In this case it was held that academic title like Bharat Ratna, Padma Bushan etc. can be given by the estate but they cannot be used as a prefix or suffix[19].

[17] People Union for Democratic Rights v. UOI 1982 AIR 1473
[18] State of Gujarat v. Gujarat's Honourable High Court AIR 1998 SC 3164.
[19] of Balaji Raghwan v. UOI (1996) 1 SCC 361.

IX. CONCLUSION

The right to equality is a fundamental aspect of the Indian Constitution, and it plays a critical role in establishing social and economic justice in our society, where the upliftment of certain classes is seen as essential for the country's success. Its emphasis on individuals' intrinsic unity through equal opportunity and care for all. The right to equality is the foundation for all other benefits and liberties. It gives all of the ingredients necessary for the development of each individual's personality in the country. As a result, courts that are seen to be the guardians of the Constitution ensure that the right to equality is construed broadly in order to realize the goals set forth by the Constitution's framers.

This essay has taken us on a journey through the philosophical and historical foundations of this right, its nuanced judicial interpretations, and its profound impact on the lives of millions of people. We have seen its importance in removing barriers to social and economic growth, addressing gender-based discrimination, and eliminating untouchability. The Constitution's notion of equality is dynamic rather than static, evolving to meet society's changing demands and our growing understanding of what justice is.

We are reminded as we reflect on the legacy of this right that while much progress has been made, more needs to be done. Discrimination, in all of its manifestations, still exists, demanding constant awareness, legislative changes, and societal transformation. Caste-based discrimination and inequality continue to exist in India despite legislative advancements, underscoring the continued importance of the right to equality. Similar to democracy itself, the right to equality calls on the active engagement of every citizen, the judiciary's attentive oversight, and the commitment of policymakers to forge a society that is fair and inclusive of all people. To further assure justice and fairness for all citizens in contemporary India, it is imperative that the right to equality be vigorously implemented and continuously expanded in light of new concerns like gender inequality, religious intolerance, and socioeconomic disparities.